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Defendant.

ORDER

During the week of October 31, 2011, Detective Charles Bluth of the Department of Public Safety Investigation Division, All Crimes Task Force in Washoe County, received information from a deactivated cooperating individual ("CI") that a "Kendra," residing at a specified address, was involved in the sale of marijuana and counterfeiting U.S. currency. (Bluth Report (#34) at 14). The CI stated that "Kendra" was conducting business from her residence and was driving a blue Volkswagen Jetta. (*Id.*). Prior to conducting surveillance,

1 Bluth identified "Kendra's" residence and the Blue Jetta and found that the registration
2 attached to the Blue Jetta did not belong to the Jetta but rather a 1995 Chevrolet 4 door
3 registered to a Kendra Davidson. (*Id.*).

4 On November 4, 2011, Bluth conducted surveillance on the Kendra Davidson residence
5 even though the Jetta was not at the location. (*Id.*). Bluth located Kendra driving toward her
6 residence in the Blue Jetta with the fictitious registration. (*Id.*). As Kendra passed Bluth, Bluth
7 pulled in behind her in the drive way with his unmarked patrol vehicle. (*Id.*). He activated his
8 lights and was wearing a tactical vest that clearly stated "Police" and "Sheriff." (*Id.*). After he
9 explained the traffic stop, she said she knew the plates did not belong on the vehicle and said
10 the plates were off the vehicle next to them, a blue Chevrolet 4 door with no registration
11 parked in the driveway. (*Id.*).

12 Upon request, Kendra exited her vehicle and another detective arrived on the scene.
13 (*Id.*). While Bluth and Detective Krush talked to Kendra, Kendra "admitted to possessing 1/8
14 ounce Marijuana in her vehicle" and "admitted to possessing a small amount of Marijuana in
15 her residence." (*Id.*). She also stated that her boyfriend, Jeremy Dolinski, was a Nevada
16 Medical Marijuana Patient and that he used to grow marijuana in a shed in the rear of the
17 residence. (*Id.*). Kendra stated that Dolinski was in Humboldt, California, "trimming," or
18 marijuana harvesting. (*Id.*). Kendra stated that she was not a medical marijuana patient. (*Id.*).
19 Kendra stated that they could not search her vehicle without a warrant. (*Id.*).

20 When Deputy Jones and his K-9, Pasha, arrived on the scene, Pasha positively
21 indicated the presence of a drug odor coming from within the vehicle and coming from within
22 the residence. (*Id.*). Based on the positive indication, Bluth applied for a search warrant for
23 both the vehicle and the residence. (*Id.*). Judge Scott Pearson found that probable cause did
24 exist for a search warrant. (*Id.*). During the execution of the search warrant, the detectives
25 found a small amount of marijuana in the vehicle and a large amount of marijuana in Kendra's
26 residence in addition to methamphetamine, packaging material, and drug paraphernalia. (*Id.*
27 at 14-15). Bluth read Kendra her *Miranda* rights and she agreed to talk to him. (*Id.* at 15).
28 Kendra admitted to possessing a few counterfeit one hundred dollar bills and directed the

1 detectives to their location. (*Id.*). Based on the counterfeit monies and Kendra's admissions,
2 Bluth applied for an additional search warrant for the computers, printers, and other related
3 electronic devices that could be used to produce counterfeit monies. (*Id.*). Judge Pearson
4 found that probable cause existed for the second search warrant. (*Id.*).

5 On November 7, 2011, Bluth contacted the Nevada Medical Marijuana Board and
6 confirmed that Dolinski was an active medical marijuana participant. (*Id.*). Detectives also
7 located the shed that had been used as a marijuana grow operation. (*Id.*).

8 **III. Transcript of First Search Warrant Application**

9 On November 4, 2011, Bluth applied for a search warrant application with Judge
10 Pearson over the telephone. (Transcript (#35) at 9-10). Bluth stated that he had probable
11 cause to believe that Kendra Davidson was committing the crime of possession of a controlled
12 substance, a felony violation of NRS § 453.336, and that evidence of the crime was presently
13 located, concealed, and/or hidden within her residence and its surrounding premises and in
14 a 1997 Volkswagen 4-door passenger car located at the same address. (*Id.* at 10).

15 Bluth told Judge Pearson that he believed he had probable cause for a search warrant
16 because (1) he had received a call from a former signed CI who indicated that a female
17 named "Kendra" was selling marijuana and had given Bluth her address; (2) when Bluth did
18 a records check on one of the vehicles he found that the registration was fictitious and that the
19 registration did come back to an individual named Kendra for a Chevy 4-door sedan but noted
20 that the registration was attached to a Volkswagen; (3) during surveillance, he conducted a
21 traffic stop on the Volkswagen when it pulled up into the residence's driveway; (4) the driver
22 was Kendra who stated that she knew the registration was fictitious; (5) during conversations
23 outside of the car, Kendra admitted to having marijuana both in her vehicle and in her
24 residence; and (6) after Kendra denied consent to search, a K-9 dog indicated positive alerts
25 on both the vehicle and the front door of the residence. (*Id.* at 10-11). Bluth also stated that
26 Kendra had told him that her boyfriend had grown marijuana in one of the back sheds on the
27 residence in the past. (*Id.* at 11-12). After listening to the K-9 dog's certification and training,
28 Judge Pearson found probable cause for a search warrant and granted the search warrant.

1 (*Id.* at 12-13).

2 DISCUSSION

3 Defendant Kendra Davidson (“Defendant”) moves to suppress all evidence seized and
4 obtained, both directly and indirectly, including statements and tangible evidence, from the
5 execution of the search warrant on November 4, 2011. (Mot. to Suppress (#34) at 1).
6 Defendant argues that Bluth intentionally or recklessly omitted to tell the judge during the
7 telephonic application for the search warrant that a person residing in the residence to be
8 searched possessed a valid state medical marijuana card. (*Id.* at 3). Defendant seeks a
9 *Franks* hearing. (*Id.* at 5-6). Defendant argues that Bluth obtained a search warrant on her
10 house based on probable cause that she had violated NRS § 453.336 by possessing a
11 controlled substance. (*Id.* at 7). However, Defendant argues that the existence of her
12 boyfriend’s medical marijuana card would have negated probable cause. (*Id.* at 8).

13 In response, the government asserts that Defendant has not met her burden for a
14 *Franks* hearing because probable cause would not have been negated with the inclusion of
15 the medical marijuana card because Bluth had information from a CI that Kendra was selling
16 marijuana from that address, Defendant had a fictitious registration, Defendant admitted that
17 she possessed marijuana in both her vehicle and her residence, the dog alerted on both the
18 vehicle and the residence, and Defendant admitted that her boyfriend used to have a
19 marijuana grow in one of the back shed’s of the residence. (Opp’n to Mot. to Suppress (#35)
20 at 3-4). The government asserts that the fact that Defendant’s boyfriend had a medical
21 marijuana card was not a material omission to determine that Defendant possessed marijuana
22 in violation of NRS § 453.336. (*Id.* at 4). The government asserts that Defendant’s boyfriend’s
23 card does not permit her to legally possess marijuana under state law. (*Id.*).

24 In reply, Defendant asserts that the government cannot rely on an anonymous
25 informant for the probable cause analysis. (Reply to Mot. to Suppress (#36) at 2).

26 “A defendant is entitled to an evidentiary hearing on the validity of the affidavit
27 underlying a search warrant if the defendant can make a substantial preliminary showing that
28 (1) the affidavit contains intentionally or recklessly false statements or misleading omissions,

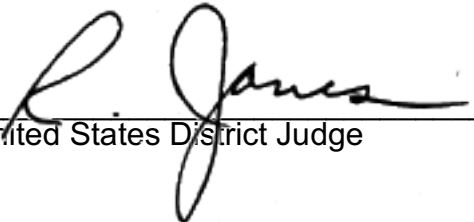
1 and (2) the affidavit cannot support a finding of probable cause without the allegedly false
2 information.” *United States v. Reeves*, 210 F.3d 1041, 1044 (9th Cir. 2000). “If inclusion of
3 the omitted facts would not have affected the probable cause determination, no *Franks*
4 hearing is required.” *Id.* Probable cause exists when a judge finds that, “considering the
5 totality of the circumstances, there is a fair probability that contraband or evidence of a crime
6 will be found.” *Id.* at 1046 (internal quotations and alterations omitted). To support a request
7 for a *Franks* hearing, a defendant must present “allegations of deliberate falsehood or of
8 reckless disregard for the truth, and those allegations must be accompanied by an offer of
9 proof.” *Franks v. Delaware*, 438 U.S. 154, 171, 98 S. Ct. 2674, 268457 L. Ed. 2d 667 (1978).

10 In this case, the inclusion of Dolinski’s medical marijuana card would not have negated
11 probable cause. First, Bluth did not solely rely on the former CI to establish probable cause
12 in this case. See *Franks*, 438 U.S. at 165, 98 S.Ct. at 2681 (holding that “[i]f an informant’s
13 tip is the source of information, the affidavit must recite ‘some of the underlying circumstances
14 from which the informant concluded’ that relevant evidence might be discovered, and ‘some
15 of the underlying circumstances from which the officer concluded that the informant, . . . was
16 ‘credible’ or his information ‘reliable.’”). Instead, Bluth conducted his own surveillance on
17 Defendant, did a registration check, and found that he had a legitimate reason to conduct a
18 traffic stop due to her fictitious registration. Second, Defendant herself admitted that *she* had
19 marijuana in the car and in her residence. Third, the K-9 alerted to drugs both in the vehicle
20 and at the front door of the residence. As such, there was enough facts to conclude that
21 probable cause existed that Defendant possessed marijuana in both her vehicle and in the
22 residence. Additionally, even if Bluth had stated that Defendant’s boyfriend had a medical
23 marijuana card, Defendant herself admitted to Bluth that she possessed the marijuana. See
24 Nev. Rev. Stat. § 453.336(1) (stating that “[a] person shall not knowingly or intentionally
25 possess a controlled substance, unless the substance was obtained directly from, or pursuant
26 to, a prescription or order of a physician, physician assistant licensed” under the statutes). As
27 such, the omission would not have changed the probable cause determination and the Court
28 denies the request for a *Franks* hearing and the motion to suppress (#34).

CONCLUSION

For the foregoing reasons, IT IS ORDERED that Defendant's Motion to Suppress (#34) is DENIED.

Dated this 1st day of August, 2012.


United States District Judge